

# **Exhibit 3**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ARIZONA  
3

4 SOILWORKS, LLC, )  
5 )  
6 Plaintiff, ) CV 06-02141-PHX-DGC  
7 )  
8 vs. ) Phoenix, Arizona  
9 ) October 9, 2008  
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BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE  
REPORTERS' TRANSCRIPT OF PROCEEDINGS  
FINAL PRETRIAL CONFERENCE

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1 if you can't show that, then it seems to me proving unjust  
2 enrichment is going to be tough.

3 So on both sides, I don't see large damages claims.  
4 And maybe the answer is that this is a patent fight and you're  
5 competitors, and you want to prove that your patent is  
6 infringed by their product and they want to prove it's not.

7 But if that's why we're here, this is a very uncertain  
8 patent trial. We're going into this trial not even knowing  
9 what claims are at issue; not knowing exactly what evidence is  
10 going to be admissible; not knowing if the jury's going to be  
11 able to sort it all out.

12 So it seems to me there's uncertainty both ways. And  
13 for that reason, I've been scratching my head since I started  
14 going through this book at home last night as to why this case  
15 is going to trial.

16 What I am going to do between now and the end of  
17 January is I'm going to require you all to sit down and try to  
18 settle -- settle the case, with the clients in the room. And  
19 I'm going to have you do it with a magistrate judge in this  
20 building who will sit down and try to help you settle the case.

21 Because you now know more than you will ever know till  
22 we get to trial about what this case looks like. I think  
23 you've probably learned a lot from each side today about just  
24 what the evidence isn't.

25 And so I'm going to require in the order that I issue